

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MARCH ASSOCIATES CONSTRUCTION, INC.
Employer

and

Case 22-RC-075268

NEW JERSEY BUILDING CONSTRUCTION
LABORERS DISTRICT COUNCIL
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.¹

MARK GASTON PEARCE, CHAIRMAN

SHARON BLOCK, MEMBER

Member Flynn, dissenting:

I would grant review.

The RD directed an election in a unit of laborers employed by the Employer. The election is slated for April 27, 2012. The Employer's president and owner, Louis March, Jr., testified that the Employer intends to cease employing laborers. March testified that he has offered the two laborers he currently employs promotions to nonunit positions effective May 1, 2012. According to the Employer, March further testified that he told the laborers that their options were to accept the promotions or be laid off. No evidence to the contrary was introduced.

¹ We adopt the Regional Director's findings, and agree with his conclusion that Louis March, Jr.'s unsubstantiated, uncorroborated testimony that, beginning May 1, 2012, the Employer intends to subcontract all bargaining-unit work on its projects is insufficient to establish the imminent and certain elimination of the unit. Our colleague's reliance on *Davey McKee Corp.*, 308 NLRB 839 (1992), is misplaced. In that case, unlike here, the employer supported its claim of imminent cessation with the mutually corroborative testimony of two witnesses along with recent reports documenting the completion dates of the projects at issue. *Id.* at 839. In addition, and again unlike this case, the evidence established that the employer had no other ongoing or prospective projects within the relevant geographical area, further confirming the employer's claim. *Id.* at 840; see also *Fish Engineering & Construction*, 308 NLRB 836, 836 (1992) (distinguishing *Davey McKee*). By comparison, March's bare claim that the Employer intends to abandon its use of laborers to do future clean-up work is decidedly inadequate.

In finding March's testimony insufficient to establish that the elimination of the petitioned-for unit is imminent and certain, the RD cited cases in which something more than testimony was introduced. See, e.g., *Hughes Aircraft Co.*, 308 NLRB 82 (1992); *Larson Plywood Company, Inc.*, 223 NLRB 1161 (1976). Those cases stand for the unremarkable proposition that more than enough evidence is enough evidence. It does not follow that uncontroverted testimony, without more, is not enough. Indeed, in another case presenting the issue before us here, the Board dismissed a petition based almost exclusively on testimony that work within the ambit of the petitioned-for unit would be completed on schedule, and that the employer had no other work under bid in the geographical area. See *Davey McKee Corp.*, 308 NLRB 839 (1992). That March did not testify that he has no projects in prospect is true, but irrelevant. The unit work here will disappear for a different reason—not because there will be no projects, but because unit employees will not be needed to perform them. The RD also cited *Canterbury of Puerto Rico, Inc.*, 225 NLRB 309 (1976), for the proposition that an employer's mere stated intention to cease employing unit employees is insufficient. But in that case, evidence was introduced contradicting the employer's stated intention. Here, the RD pointed to no evidence contradicting March's testimony that he will no longer employ laborers after May 1. Thus, *Canterbury of Puerto Rico* is distinguishable.

TERENCE F. FLYNN, MEMBER

Dated, Washington, D.C., April 27, 2012